IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1685 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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CHEHARAJI SHANAJI

Versus

COMPETENT AUTHORITY & ADDITIONAL COLLECTOR

Appearance:

1. Special Civil Application No. 1685 of 1991

MR BP TANNA for Petitioner No. 1

MS. PANDIT, AGP for Respondent No. 1,4

MR JAYESH M. BAROT FOR HS MUNSHAW for Respondent No. 2

MR RM CHHAYA for Respondent No. 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 18/09/2001

ORAL JUDGEMENT

Heard learned Sr. advocate Mr. B.P.Tanna for

the petitioner; Ms. Pandit, learned AGP for respondents nos. 1 and 4; Mr. R.M. Chhaya, learned advocate for respondent No. 3 and Mr. Jayesh M. Barot for Mr. Munshaw, learned advocate for respondent No. 2. In this petition, rule was issued by this Court on 28th June, 1995. On 28th June, 1995, following order was passed by this Court :

"Rule. Service of rule is waived by learned advocate Mr. H.S. Munshaw for respondent NO.2 and learned advocate Shri R.M. Chhaya for respondent No.3. The ad-interim relief is ordered to continue till this petition is heard and finally disposed of. It would also be open for the petitioner to pursue the other remedy if advised and available for challenging the order under challenge in this petition. The grant of interim relief will not come in the way of the authorities in implementation of the development plan. Similarly, the grant of interim relief would not come in the way of the authorities for de-reservation of the subject matter of this petition to the development plan. It would be open to any party to this petition to move this court for expeditious hearing of this petition after the remaining respondents are served. Direct Service to respondents nos. 1 and 4 is permitted."

Brief facts of the petition are as under :

In 1976, a Form was filled in by the petitioner as per Annexure - A to the petition, in respect of survey No. 830; the petitioner had made an application under section 21 of the Urban Land (Ceiling and Regulation) Act, 1976 ("the ULC Act" for short) and had accordingly filled in Form No.5 and had submitted estimate and plan. Under the provisions of the law, the powers are delegated by the State Government to the competent authority in this regard and application under section 21 was rejected by the competent authority on the ground that the Gujarat Housing Board needed the plot in question, by order dated 15.3.1986. Said order dated 15.3.86 which is at annexure-C to the petition was challenged by the petitioner before the Additional Urban Land Tribunal and Ex Officio Secretary to the Government, Revenue Department by filing an appeal which appeal was allowed by the said Tribunal by order dated 26.6.1986. Copy of the said order dated 26.6.1986 is at Annexure D to the petition. As per order dated 26.6.1986, the tribunal remanded the matter to the competent authority for

considering the petitioner's scheme as per the provisions of section 21 of the ULC Act. It has been submitted that the scheme of the petitioner ought to have been considered by the competent authority in light of the directions given by the Additional Urban Land Tribunal and Ex Officio Secretary to the Government, Revenue Department. That in the meanwhile, the competent authority had disposed of Form No.1 and had declared the land in question as surplus and had entered the Government as owner of the land. In view of this, the petitioner was having no option but to file another appeal before the tribunal and accordingly, appeal no. 235 of 1986 was filed before the tribunal wherein the tribunal passed an order on 20.8.87 and thereby allowed the appeal in part ordering that the impugned order be modified to reflect the status of Survey No. 830 as a result of the final order in respect of the petitioner's scheme under section 21 of the ULC Act. By said order dated 20.8.87, it was also ordered by the tribunal that if the scheme is sanctioned, excess vacant land will be 214 sq. mt. and if the scheme is rejected, excess vacant land as per the impugned order should be surrendered. The tribunal further ordered by said order that before issuing Notification under section 10(3) of the ULC Act, the competent authority should wait for the final order in respect of survey no. 830 u/s.21 of the ULC Act. The petitioner has submitted that despite the two clear mandates of the tribunal, one dated 26.6.87 and the other one dated 20.8.87, the competent authority decided to proceed further and passed an order on 19.4.88 to the effect that since the Government was entered as owner, application under section 21 of the ULC Act cannot be granted. Copy of the order dated 20.8.87 is at annexure F to the petition and copy of the order dated 19.4.88 is at annexure G to the petition. The petitioner has also submitted that the competent authority, for some or the other reason, is trying to throw away the reasonable request of the petitioner. according to the petitioner, the entry of the Government as the land owner was wrongly done and that error was corrected by the tribunal by its order dated 20.8.87 and the position was made clear and, therefore, the application of the petitioner - land owner could not have been disposed of on the ground that the Government was entered as owner of the land. As per the submissions made, said order, as a matter of fact, has merged with the order of the tribunal and all what the competent authority was required to consider was annexures D and F which are orders dated 26.6.87 and 20.8.87 respectively. It is submitted that the third appeal was preferred by the petitioner being appeal no. 320 of 1988 before the tribunal wherein the

tribunal passed an order dated 30.11.88 and the case was remanded back to the competent authority. According to the petitioner, despite three rounds of litigation and three orders of the tribunal i.e. order dated 26.6.87, 20.8.87 and 30.11.88, the competent authority decided the matter against the petitioner. It has been submitted that as a matter of fact, in view of the mandate given by the tribunal on 26.6.87 (Annexure-D) read with the mandate given on 20.8.87 (Annexure F) and 30.11.88, there was no scope for the competent authority to dispose of the application in this fashion and the right procedure is to wait till the recommendation of the tribunal which is pending with the Government is not disposed. It has also been pointed out that as per the order dated 20.8.87, the tribunal had made it clear that before issuing the Notification under section 10(3) of the ULC Act, the competent authority should wait for the final order in respect of Survey No. 830 u/s.21 of the ULC Act. In all fairness, on combined reading of three orders referred to above, the competent authority ought not to have rejected the prayer of the petitioner. However, the competent authority passed order dated 28.2.1990 and rejected the scheme under section 21 of the ULC Act which is under challenge in this petition.

The competent authority has filed affidavit in reply and on behalf of respondent No. 2 Board also, two affidavit in replies have been filed and thereafter, the competent authority has filed affidavit in reply. No rejoinder thereto has been filed by the petitioner.

During the course of hearing, learned advocate Mr. B.P. Tanna has submitted that three orders were passed by the tribunal; during that period, application of the petitioner under section 21 of the ULC Act was pending before the competent authority. The petitioner has challenged the order passed by the competent authority by filing the appeal which appeal was allowed in part and the order dated 15th March, 1986 passed by the competent authority was set aside and the matter was remanded back for consideration of the scheme of the petitioner under section 21 of the Act. Said order was passed by the tribunal on 26th June, 1987 and, thereafter, second order was passed by the tribunal on 20th August, 1987 wherein also the petitioner has challenged the order dated 2nd November, 1987 passed by the competent authority under section 8(4) 9 of the ULC Act. The tribunal has allowed the said appeal in part and it was ordered that if the scheme is sanctioned, excess vacant land will be 214 sq. mt. and if the scheme is rejected, the excess vacant land as per the

impugned order should be surrendered. The tribunal has also ordered that before issuing notification u/s.10(3) of the Act, the competent authority should wait for final order in respect of Survey No. 830 u/s.21 of the Act. Inspite of such clear directions issued by the tribunal, the competent authority passed order dated 19.4.88 to the effect that since the Government was entered as owner, application under section 21 cannot be granted. The appeal against the said order was also allowed by the tribunal by order dated 30.11.88 and the case was remanded back to the competent authority. Inspite of the said order dated 30.11.1988 passed by the tribunal, the competent authority has ultimately rejected the scheme under section 21 on the even ground by considering the Government Resolution dated 3rd February, 1987 that if any land is in reservation, then, in respect of the same land, scheme under section 21 submitted by the land owner cannot be granted and such application is required to be rejected and on the basis of such consideration, scheme of the petitioner under section 21 of the Act was rejected by the competent authority.

In this petition, affidavit in reply has been filed by the competent authority dated 15th September, 2000 wherein it has been submitted that after the proceedings under section 10(6) of the ULC Act, the possession of the land in question has been taken over by the Government on 25.11.1986; panchanama was carried out on 5.9.2000 by the Talati, Vejalpur, Taluka City Ahmedabad in which the land in question is at present open land and an entry was also made in the Government's name on 14.10.1987 in village form No. 6. The deponent has also submitted in the said affidavit in reply that in the village form no. 7/12 also, the land has been shown to have vested in the Government. The deponent has submitted that in view of the Repeal Act, the petition has become infructuous and the petition is required to be dismissed on that ground.

Further affidavit in reply has been filed by the competent authority on 21.12.2000 wherein in para 3, the deponent of the said affidavit in reply has pointed out that the order dated 28.2.1990 has rightly been passed by the competent authority and the application of the petitioner under section 21 of the ULC Act has already been rejected. The deponent has further submitted that in view of the order dated 20.8.1987, passed by the tribunal in appeal No. API/UL/AhD/235/86, the tribunal has ordered that if the scheme is not sanctioned, then, the possession of the land in question is to be taken and accordingly, steps were to be taken by the competent

authority. It has also been submitted that the order of the tribunal dated 20.8.87 has become final and in view of that, as soon as the scheme of the petitioner is rejected, the question only remain was to take possession of the excess vacant land to the tune of 5273 sq. mtrs. of Survey No. 549/2 and survey No. 830. According to the deponent, in view of the said order, the deponent was having no option but to proceed further to take possession of the land in question as per the order of the tribunal. The deponent has further submitted that the petitioner took matter before the tribunal by revision application no. 79 of 1986 which was allowed to the limited extent and vide order dated 26.6.1987, it was remanded for the decision on merits and, therefore, after hearing the parties and permitting the petitioner to produce requisite documents in the proceedings and while deciding form no. 1, it was observed that the decision of the authority was already taken on 25.11.1986 under section 10(c) and that the notification under sec. 10(b) was already issued on 25.9.1984 and as such, the land has vested in to the Government and in that view of the matter, the petition has now become infructuous. In para 4 of the said affidavit in reply, the deponent has submitted that as the petitioner has not taken up the proceedings before the tribunal against the clearance of the form no. 1 regarding the said land, and also in view of the absence of requisite stay of the proceedings continue, the notification has been issued by the competent authority. The deponent has submitted that as the decision in form no.1 declaring excess vacant land was not under challenge, it has become final. It was submitted that the form no. 1 of the petitioner was cleared on 2.11.1982 and in view of the fact that the application of the petitioner being rejected under section 21 of the Act, the said order was required to be enforced and accordingly, the proceedings already taken under section 10(3) and 10(6) remains legal and valid. The deponent has submitted in para 5 of the affidavit that the Ahmedabad Urban Development Authority vide letter dated 16.1.1990 clarified that the reservation of the housing board is not cancelled. It is also submitted that the letter dated 16.5.1986 refers to request the cancellation of the reservation for housing board. However, such reservation has not been cancelled as on today. On the basis of the aforesaid submissions made by the deponent in the further affidavit in reply, the deponent has submitted that the petition has no merits and it is required to be rejected.

I have also heard Ms. Pandit, learned AGP for the respondent authorities. Ms. Pandit has submitted

that the competent authority has filed two detailed affidavits in reply wherein all the details have been given and after considering three orders passed by the tribunal, the competent authority has passed the order dated 28th February, 1990 which is legal and valid order. She has also submitted that the possession of the land in question has also been taken over from the petitioner by the competent authority on 25.11.1986 and necessary entries to that effect have also been made in the record in favour of the Government and, therefore, this petition is required to be dismissed.

Learned advocate Mr. Chhaya appearing for the respondent No. 3 Ahmedabad Urban Development Authority has submitted that as per the proposal for draft revised development plan published on 29.11.97 under section 13 of the Gujarat Town Planning and Urban Development Act, 1976, the lands in question are falling in the restricted residential and utility service and from the western side, there is deduction of 60.00 and 12.00 meter DP Road. Mr. Chhaya, learned advocate appearing for the respondent No.3 has submitted that in the revised draft development plan, the reservation of the Housing Board is not mentioned and that has been cancelled. He has relied upon the letter dated 29th June, 1998 issued by the Assistant Town Planner, AUDA, Ahmedabad. Therefore, considering the submission of the learned advocate Mr. Chhaya, from 1997 onwards, the reservation qua land in question for the Housing Board has been cancelled. Only DP Road is passing through the land in question. That position has been clarified in the letter dated 29th June, 1998 issued by the respondent No.3.

Learned advocate Mr. Tanna has submitted that during the pendency of an application under section 21 of the ULC Act, the competent authority has passed order and cleared Form No.1 and declared the excess vacant land and notification under section 10(3) to 10(6) were issued and the possession was taken over by the competent authority on 25th November, 1986 and necessary entries were made to that effect in the revenue record. According to him, all this has been done during the pendency of the application under section 21 of the Act and, therefore, same is illegal. He has relied upon the decision of the division bench of this Court in case of Savita R. Patel reported in 1999(1) GLH page 100. He has submitted that in the said decision, provisions of section 21 of the ULC Act were considered by the division bench of this court. In para 5 of the said decision, it has been observed by the division bench as under :

"5. Section 21 of the Act reads as under:

(1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter, where a person holds any vacant land in excess of the ceiling limit and such person declares within such time, in such form and in such manner as may be prescribed before the competent authority that such land is to be utilised for the construction of dwelling units (each such dwelling unit having a plinth area not exceeding eighty square metres) for the accommodation of the weaker sections of the society, in accordance with any scheme approved by such authority as the State Government may, by notification in the Official Gazette, specify in this behalf, then, the competent authority may, after making such inquiry as it deems fit, declare such land not to be excess land for the purpose of this Chapter and permit such person to continue to hold such land for the aforesaid purpose, subject to such terms and condition as to the time limit within which such buildings are to be constructed. "

Para 8 of the said decision reads as under:

"8. It is submitted by Mr. Patel, learned advocate appearing for the appellants in both the matters that applications were pending at the relevant time under section 21 of the Act, and in view of that, it was not open for the competent authority to render the decision on the basis of the form and declare the land surplus, and to initiate further proceedings. Mr. Patel submitted that after filing a statement under section 6 of the Act, if the application for exemption is pending either under section 20 or under section 21 of the Act, it is the duty of the Government to first deal with such application and then to proceed under sections 8 (1) and 8(3) of the Act. For this purpose, he has placed reliance on a decision of a Division Bench of this Court in the case of Nirmalaben v. State of Gujarat reported in 1984 (1) GLR 322. The decision of the Full Bench in the case of Avanti Organization v. Competent Authority reported in 1989 (1) GLR 586 was considered by a division bench of this court in the case of Samrathben Chokshi v. State of Gujarat in LPA No. 485 of 1984 in Special Civil Application NO. 1735

of 1984 decided on 8.6.1983. In the said judgment, in paragraphs 6 and 7, the Division Bench held as under:

'6. Once we accept the position that for the purpose of the present question there need not be a distinction between applications for reliefs under sections 20 and 21 of the Act, the allowing of them leading to the same result, there is no difficulty in applying the ratio of the Full Bench to the facts of the present case. The learned single Judge, in our view, need not have made a distinction between an application under section 20 and an application 21 of the Act for the purpose of considering the question as to whether during their pendency there could be prosecution of the other process under the Act. As per our discussion supra, the result in both applications, if that should be the case, in favour of the applicants, would be to the same effect, namely the land in question will not come within the purview of Chapter III of the Act and on the other hand, it will go out of the purview of Chapter III of the Act. "

In para 10 of the said decision, it has been observed by the Division Bench of this Court as under:

"The State is bound to follow the decision of this Court. Under the circumstances, the proceedings initiated in the present two cases in respect of the lands upto the stage of section 10(2) of the Act are for the present left untouched. The prosecution of further processes under the Act after the stage of section 10(2) of the Act will depend upon the decision on the applications under section 20 and/or section 21 of the Act. "

Considering the said decision of the division bench of this court in this case also, there is no dispute that the application submitted by the petitioner under section 21 of the ULC Act was pending till the decision has been taken by the competent authority on 28th February, 1990. Relying upon the decision of the division bench of this court, learned advocate Mr. Tanna has submitted that the petitioner has challenged the

order of the competent authority dated 15.3.1986 before the tribunal and the tribunal has allowed the appeal preferred by the tribunal as stated above by remanding the matter back for considering the scheme of the petitioner under section 21 of the ULC Act, by order dated 26th June, 1987. By said order, the order of the competent authority dated 15.3.1986 was set aside by the tribunal. Thus, according to him, during the pendency of the appeal no. 79 of 1986 under section 33 of the ULC Act, possession was taken over by the competent authority on 25th November, 1986. This would mean that during the pendency of the application u/s.21 and also during the pendency of appeal against the order of the competent authority in respect of section 21 scheme, the possession was taken over by the state Government in between and ultimately notification under section 10(3) and 10(6) has been issued and further process has been completed by the State Government as per the affidavit in reply filed by the competent authority. According to Mr. Tanna, the order dated 15.6.1986 passed by the competent authority was set aside by the tribunal on 26th June, 1987 by remanding the matter back for consideration of section 21 scheme and, therefore, during the pendency of the application under section 21 of the ULC Act, the respondent competent authority ought not to have initiated further process beyond the stage of sec.10(2) of the ULC Act. He has submitted that the competent authority has declared excess vacant land 5273 sq. mtrs. by order dated 2nd November, 1987 which order was challenged by the petitioner by filing appeal no. 235 of 1986 and the tribunal, by order dated 20th August, 1987, allowed the said appeal in part and directed that the impugned order be modified to reflect the status of the land in question as a result of the final order in respect of the petitioners scheme under section 21 of the Act. The tribunal has further directed that if the scheme is sanctioned, the excess vacant land will be 214 sq. mtrs. and if the scheme is rejected, the excess vacant land as per the impugned order should be surrendered. In view of the clear observations made by the tribunal in its order dated 20th august, 1987, that before issuing notification under section 10(3) of the Act, the competent authority should wait for the final order in respect of survey No. 830 under section 21 of the Act, the procedure followed by the competent authority in issuing the notification beyond the stage of 10(2) is illegal. Before the tribunal, the fact of taking over the possession by the state Government or the competent authority on 25.11.1986 was not disclosed and therefore, it was clear mandate issued by the tribunal not to proceed further beyond sec.10(2) notification till

the application under section 21 is finally decided by the competent authority. Therefore, in view of the fact that the fact of taking over the possession of the land in question in the year 1986 was not disclosed and in view of such clear cut mandate given by the tribunal, issuance of notification beyond the stage of section 10(2) illegal and contrary to the directions issued by the tribunal. The competent authority is bound to consider the directions issued by the tribunal which is an authority higher than the competent authority. In appeal no. 320 of 1988, the petitioner has challenged the order passed by the competent authority rejecting the scheme under section 21 of the ULC Act. In the said appeal, the tribunal passed order on 30.11.1988 considering the earlier order passed by the tribunal dated 20th August, 1987 and allowed the appeal in part by directing the competent authority to examine the scheme under section 21 of the Act on merits and to pass appropriate orders. However, inspite of such clear cut mandate given by the Tribunal, instead of examining the scheme on merits, the competent authority by order dated 28th February, 1990, considered only reservation made for Housing Board by making reference of the Government resolution dated 3.2.1987. Though it was pointed out by the petitioner before the competent authority that necessary resolution dated 16th May, 1986 has been made to cancel reservation of the Housing Board in respect of the land in question, whereby the respondent No.3 AUDA has recommended to the Government to cancel the reservation. However, the competent authority has not believed such resolution and has considered that more than four years have gone in respect of the resolution dated 16th May, 1986 and, therefore, same cannot be taken into account and it considered the resolution dated 3.2.1987 and held that since the land has been reserved for the Housing Board, scheme under section 21 cannot be sanctioned and, on such considerations, the competent authority rejected the scheme under section 21 of the Act by order dated 28th February, 1990. Thus, inspite of the directions issued by the tribunal as per the last order dated 30.11.1988, the competent authority has not examined the merits of the scheme and the scheme was rejected only on the ground that the land in question has been reserved for Housing Board and, therefore, scheme cannot be granted. Therefore, taking into consideration all these aspects of the matter and also taking into consideration three orders of the tribunal referred to hereinabove, according to my opinion, the order dated 28.2.1990 passed by the competent authority is not an order on merits and is also not in accordance with the directions issued by the tribunal from time to time as

per three orders referred to hereinabove. Therefore, considering these facts and also considering the subsequent facts which have been brought to the notice of the Court by learned advocate Mr. Chhaya, now, in view of the revised draft development plan dated 29th November, 1997 published under sec. 13 of the Gujarat Town Planning and Urban Development Act, 1976, the reservation for the Gujarat Housing Board is cancelled, therefore, as per my opinion, the order dated 28th February, 1990 passed by the competent authority is required to be quashed and set aside since it has not been passed in accordance with the directions issued by the tribunal vide three orders referred to hereinabove.

In the result, petition is allowed. Impugned order dated 28th February, 1990 (Annexure "I") passed by the competent authority is hereby quashed and set aside. Rule is accordingly made absolute with no order as to costs.

18.9.2001. (H.K. Rathod,J.)